

## ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA09-1033

TERRY OTTER

APPELLANT

V.

SEX OFFENDER ASSESSMENT  
COMMITTEE

APPELLEE

**Opinion Delivered** April 7, 2010

APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT  
[NO. CV-08-1484-2]

HONORABLE ROBERT H. WYATT,  
JR., JUDGE

AFFIRMED

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### LARRY D. VAUGHT, Chief Judge

Terry Otter appeals the Jefferson County Circuit Court's dismissal of his petition to review the findings of fact, conclusions of law and final community notification level issued by the Arkansas Sex Offender Assessment Committee (SOAC). The trial court dismissed the petition based on lack of subject-matter jurisdiction, finding that Otter's petition was untimely. Otter contends that there is a lack of substantial evidence supporting that decision. We disagree and affirm.

In August 1991, Otter pled guilty to kidnapping and two counts of rape. He was sentenced to forty years' imprisonment on all three charges to run concurrently. In May 2008, SOAC assessed Otter to determine the level of risk he might pose to the public upon his release and concluded that he was a level-four sexually violent predator. Otter requested administrative review of the assignment in June 2008. On October 24, 2008, SOAC upheld the assignment and

advised Otter that he had thirty days from receipt of the findings to petition for judicial review.

Otter filed a petition for judicial review in the trial court on December 4, 2008. He alleged that the assignment was capricious and without merit and requested that it be set aside. He filed an amended petition adding the claim that the application of Arkansas Code Annotated section 12-12-905 (Repl. 2009)<sup>1</sup> was improper because it was only applicable to convictions after 1997, and he was convicted in 1991. The trial court dismissed the petition as untimely. The trial court relied upon Arkansas Code Annotated section 25-15-212(b)(1)<sup>2</sup> and Arkansas Rule of Civil Procedure 6(d)<sup>3</sup> and concluded that Otter was served with SOAC's final decision on October 27, 2008. Because Otter's petition for judicial review was not filed until December 4, 2008, more than thirty days after October 27, 2008, the trial court found that it was untimely.

On appeal, Otter argues that substantial evidence fails to support the trial court's order; specifically, he argues that the trial court sua sponte raised and ruled on a timeliness issue that was not raised by the State and not argued below. Further, Otter argues that the trial court erroneously concluded that he was served with SOAC's decision on October 27, 2008, by adding

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<sup>1</sup>The Sex Offender Registration Act applies to a person who is adjudicated guilty on or after August 1, 1997, of a sex offense, aggravated sex offense, or sexually violent offense. Ark. Code Ann. § 12-12-905(a)(1).

<sup>2</sup>Arkansas Code Annotated section 25-15-212(b)(1) governs the Administrative Procedure Act and provides that proceedings for review shall be instituted by filing a petition within thirty days after service upon the petitioner of the agency's final decision.

<sup>3</sup>Arkansas Rule of Civil Procedure 6(d) states that whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or commercial delivery company, three days shall be added to the prescribed period.

three days to the date the SOAC decision was issued. He points out that the envelope addressed to Otter that contained SOAC's decision had a postmark of October 31, 2008, which demonstrates that the trial court's service date is incorrect. Lastly, he argues that he was served by certified mail, and there was no evidence in the record before the trial court establishing the exact date that he signed for it.

The Administrative Procedure Act requires that petitions for judicial review be initiated "within thirty (30) days after service upon petitioner of the agency's final decision." Ark. Code Ann. § 25-15-212(b)(1) (Repl. 2002). Otter is correct that the trial court erred in concluding that he was served with the decision on October 27, 2008. However, the record on appeal supports the trial court's conclusion that Otter's December 4, 2008 petition was filed more than thirty days after he was served with copies of the SOAC's final decision. The record establishes that Otter was served with the decision on November 3, 2008.<sup>4</sup> Otter's petition was filed on December 4, 2008, thirty-one days after November 3, 2008. Otter is therefore precluded from seeking a remedy under the Administrative Procedure Act. Ark. Code Ann. § 25-15-212(b)(1); *Linell v. Norris*, 2009 Ark. 303, \_\_\_ S.W.3d \_\_\_. Accordingly, we affirm the trial court's dismissal.

Affirmed.

PITTMAN and BROWN, JJ., agree.

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<sup>4</sup>The supplemental record reflects that on November 3, 2008, Otter signed a Receipt of SOSRA Documents Form that stated: "I . . . acknowledge that I received the following documents for Sex Offender Screening and Risk Assessment, or from a representative of the Sex Offender Assessment Committee on [November 3, 2008]."